



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	State Board of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-771
<b>Regulation Title:</b>	Local Department Approved Provider Standards
<b>Action Title:</b>	Conform to Federal and State Law
<b>Date:</b>	June 18, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The regulation addresses standards for local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers. The purpose of the proposed action is to repeal the existing regulation, 22 VAC 40-770 *et seq.*, and replace it with a new regulation. During the Notice of Intended Regulatory Action period, the Department of Social Services examined the current regulation and found, in light of changes to federal and state laws and regulations, the regulation is no longer easily understood by the individuals and entities affected. The current regulation includes generic provisions that apply to all providers and because of the uniqueness of each type of provider; such a format is no longer effective. A new regulation was created in an effort to make the regulation less confusing and easily understood. The new regulation is divided into

appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Pursuant to § 63.2-217 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>), the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs. The regulation does not exceed the scope of the mandate. The Office of the Attorney General certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable federal and state law.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The regulation is necessary to protect the health, safety, and welfare of citizens by setting a base of quality in purchasing care and making placements for vulnerable children and adults. Because of these standards, assurances can be made that the care purchased or arranged meets health and safety standards and supports care which is conducive to the health, safety and well-being of individuals, children and families. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with all current federal and state laws and regulations.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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The purpose of the proposed action is to repeal the existing regulation and replace it with a new regulation. Specifically, the new regulation is divided into appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations. The regulation is divided into the following six sections: the first section provides definitions that govern the entire regulation; the second section outlines the agency approved providers for which the regulation is applicable; the third section outlines standards for adult service providers; the fourth section outlines standards for child care providers; the fifth section outlines standards for adoption providers; and the sixth section outlines standards for foster providers.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The public benefits by being assured that service providers approved through local departments of social services meet standards and are qualified to care for children and adults. The Department of Social Services and the Commonwealth benefit by having clear procedures aligned with current applicable federal and state laws and regulations. There are no disadvantages to the public or Commonwealth.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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Implementation of the new regulation does not produce a fiscal impact on the Commonwealth. The Department of Social Services, local departments of social services, and social service clients will be affected by promulgation of the new regulation.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

The regulation addresses standards by which local departments of social services approve child care, adult care, foster care and adoptive home providers. The current regulation, 22 VAC 40-770, is being repealed and replaced with a new regulation, 22 VAC 40-771.

The proposed regulation differs from the current regulation in two main ways, one of which is formatting. The current regulation was written in generic format, sectioned according to topics such as age, criminal records, home safety, etc. Users must read the entire regulation to determine if and how a particular standard applies to the program in which they work. The proposed regulation is re-formatted, with a separate section for each provider type. Each section addresses all applicable standards for that provider type.

In addition to formatting changes, some content changes are proposed in order to comply with state and federal laws. This regulation was first established in 1985, and changes are also proposed to better reflect current and best practices.

### **22 VAC 40-771-10, Definitions**

This section replaces the current 22 VAC 40-770-10, but remains dedicated to Definitions for the entire regulation. Proposed changes in Definitions are as follows:

“Adoptive parent or parents.” In the proposed regulation, the last sentence, stating that standards apply to adoptive parents until final order, has been deleted. The sentence was added to the new adoption section, 22 VAC 40-771-50, because it is not a definition.

“Adult abuse.” This definition has been added in the proposed regulation.

“Adult exploitation.” This definition has been added in the proposed regulation.

“Adult foster or family care provider.” This definition has been deleted in the proposed regulation and replaced with two new definitions, “Adult foster care,” and “Adult foster care provider.”

“Adult neglect.” This definition has been added.

“Adult services.” This definition has been added.

“Agency.” This definition was deleted because all of the proposed regulations relate to local departments of social services.

“Child Protective Service Central Registry.” This definition was deleted and replaced with “Central Registry” to reflect the system change in the *Code of Virginia* to the differential response system for child protective services.

“Child or children.” This definition was modified to be consistent with the *Code of Virginia* definition of child.

“Department.” This definition was added.

“Family day care provider.” This definition has been replaced with a definition of “Family day home,” to reflect language in the *Code of Virginia*.

“Foster parent.” This definition has been changed to include reference to §63.2-900 of the *Code of Virginia*, regarding accepting children for placement in homes by local boards.

“Home-based services.” This definition has been added.

“In-home day care provider.” This has been replaced with “In-home child care provider.”

“Local board,” “Local department” and “Local department approved provider.” These definitions have been added.

“Permanency provider.” This definition was added to emphasize that care provided by both foster and adoptive parents is aimed at permanency for the children in their care.

“Residential care.” This definition has been deleted because the regulation does not apply to residential care.

## **22 VAC 40-771-20, Local department approved providers.**

This section replaces 22 VAC 40-770-20, Agency Approved Providers. The title has been changed to clarify that the regulation pertains specifically to providers approved by local departments of social services. Provisions in the proposed regulation are the same as in the current regulation, with the following exceptions:

B.1.a: A statement was added to clarify that the standards do not apply to adoptive parents after the final order of adoption is entered. This represents current practice.

B.1. and 2: The names of the applicable providers were changed to match changes in the Definitions section of the proposed regulation.

C: A statement was added to clarify that these standards do not apply to individual providers licensed or approved by any organization other than a local department of social services.

**22 VAC 40-771-30, Adult Services**

In the current regulation, 22 VAC 40-770-30 is entitled “Standards for providers and other persons.” It includes standards for age, criminal records, child abuse/neglect record, interviews, references and employment history for all provider types. This section of the regulation has been deleted, and applicable provisions were incorporated into the appropriate provider-specific sections of 22 VAC-40-771. The proposed 22 VAC 40-771-30 addresses standards exclusive to adult services providers.

Substantive proposed changes for adult services providers are as follows:

A.2: Adds barrier crimes that shall prohibit a provider and, for out-of-home care, the assistant, spouse, and other adult household members who come in contact with adults in care, from receiving approval as a provider; these persons must identify any criminal convictions and consent to a criminal record search. Currently, there is no requirement for a criminal record search for adult services providers. The provider may request a variance on this requirement if it does not jeopardize the safety or proper care of adult and the local department approves the exception. The provider shall pay the fee for the criminal record check.

A.3: Requires that the provider be knowledgeable of caring for adults. At least one interview must occur in the home where care is to be provided for adult foster care and adult day services in which all members of the household shall be interviewed to ensure they understand the demands and expectations of care to be given.

A.3.g: Adds requirements that providers must meet for adult foster care; these mirror those of assisted living facilities. Recipients of both services may receive an Auxiliary Grant. Effective 7/1/03, the maximum reimbursement rate for both programs became the same (previously, adult foster care had been almost \$300 less than assisted living). The same expectations and accountability issues should apply to both services.

A.5.a: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).

A.6: Adds requirement for providers to keep the local department apprised of changes in the household that may affect approval.

A.7: Added at the request of local departments who have difficulties handling providers who do not perform the work as assigned.

B.3.b. and c: Further defines the provision of meals and snacks to be nutritionally balanced and appropriate to the length of time in care and that drinking water provided should be adequate.

B.4: Updates the regulation to conform to current *Code of Virginia* requirements regarding vehicular safety.

B.5.c: Adds requirements regarding the handling of medications for adult foster care and adult day services.

B.5.d: Adds requirements to mirror requirements in adult foster care with assisted living facility regulations. Adult foster care is not an appropriate setting for adults with certain heavy-care, nursing-oriented needs (such as being ventilator dependent or requiring continuous licensed nursing care). This makes the requirements for adult foster care and assisted living more consistent and is an additional protection to vulnerable adults.

B.8: Adds information on providers' obligation to report suspected cases of abuse, neglect, or exploitation to Adult Protective Services.

B.9: Requires that adult foster care recipients have adequate, properly fitting, and seasonal clothing that is properly cleaned or laundered and altered or repaired as necessary.

C.2.b.-d: Standards for the home of the adult foster care or adult day services provider had language reworked and approved by the State Fire Marshal regarding fire inspections and emergency plans.

C.2.e: Clarifies what is expected to meet minimal safety safeguards relative to weapons in the home.

C.2.f.: Requires that household pets be up-to-date on vaccinations.

D: Enhances record requirements for adult foster care and adult day services, including confidentiality issues.

E: Specifies that the home must also meet requirements for adult day services and adult foster care in order for the provider to be approved.

H: Adds that monitoring shall include interviews with adults in care and that the adult shall have access to provider monitoring reports upon request.

J: "Inability to meet standards" was clarified to reflect best practices and what is currently occurring in the field. Specifically, the section addresses conditions and penalties for provisional approval, suspension of approval, and revocation of approval.

K: For the out-of-home provider who relocates, allows the locality up to 30 days to determine continued compliance with standards related to the home.

L: Changes word "grieve" to "appeal."

M: Adds a new section pertaining to rights and responsibilities of adults in care, not in the current regulation. It mirrors those in the Licensing of Assisted Living Facilities regulation. The right to self-determination is inherent in our adult programs and is a major difference in adult vs. children's programs. Some recommendations are from a study completed by Virginia Commonwealth University.

**22 VAC 40-771-40, Child Care.**

In the current regulation, 22 VAC 40-770-40 is entitled “Standards for care.” It provides standards for non-discrimination, supervision, food, transportation of clients, medical care, discipline of children, activities, abuse/neglect/exploitation reporting and clothing requirements for all provider types. This section of the regulation has been deleted, and applicable provisions were incorporated into the appropriate provider-specific sections of 22 VAC-40-771. The proposed 22 VAC 40-771 addresses standards exclusive to child care providers.

Substantive proposed changes for child care providers are as follows:

A.2: Adds requirements for criminal background checks, disclosure of convictions of barrier crimes and Child Protective Services Central Registry checks to reflect requirements in §63.2-1725 of the *Code of Virginia*.

A.2.c.(3): This section is new. Requirements for providers to meet health and safety standards is based on best practice to ensure that providers approved under this regulation have health and safety training necessary to ensure the safety of children. Child Care and Development Fund (CCDF) regulations, 45 CFR Parts 98 and 99. § 98.40 (b)(1) permit states to impose more stringent standards on child care providers of services which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

A.4.e: Adds a provision to conduct at least one interview in the home where the care is to be provided and to interview all adult household members to protect the safety of the children in care.

A.5: Adds a requirement for child care providers to attend required orientation and training based on best practice for the safety of children and to more closely align requirements with those of licensed family day home providers.

A.6: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis”).

A.7: Adds an additional requirement for the provider to keep the local department informed of changes that may affect approval of that provider as a safety measure for the children in care.

B.2.c: Adds a provision for the length of an extended absence as a safety measure to ensure that substitute care arrangements is approved.

B.4.c: Modifies requirements for child restraint devices to ensure the safety of all passengers being transported.

B.7.a.(1): Expands the requirement for space for activities as a health and safety measure to ensure that adequate space is available.

B.8: Revises the requirements regarding mandated reporting of suspected child abuse, neglect, or exploitation of children in accordance with §63.2-1509 of the *Code of Virginia* and the toll-free child abuse hotline number is added.

C.2.e: Expands and strengthens the requirements regarding possession and storage of firearms in the home are to ensure the safety of children in care.

C.2.f: Expands the requirements for household pets to ensure the safety of children in care.

C.2.h: Clarifies the requirements for smoke detectors to ensure the detectors are battery-operated and to exempt installations approved by State or Local Fire Marshals.

C.4: Clarifies the capacity of family day homes to ensure local departments do not approve homes that are subject to licensure according to §63.2-100 of the *Code of Virginia*.

G.2: Adds a requirement that provides access to an approved home by a Department representative whenever a child is in care for the protection of children. Similar protection is provided for children in licensed family day homes by § 63.2-1706 of the *Code of Virginia*.

G.3: Adds a requirement that provides access by a parent to the home and their child whenever the child is in care for the protection of children and is based on §63.2-1813 of the *Code of Virginia*.

K: Revises grievance procedures for clarification.

### **22 VAC 40-771-50, Permanency Providers: Adoption.**

In the current regulation, 22 VAC 40-770-50 is entitled “Standards for the home of the out-of-home provider.” It provides standards for physical accommodations, home safety, sanitation and capacity for all provider types. This section of the regulation has been deleted, and applicable provisions were incorporated into the appropriate provider-specific sections of 22 VAC-50-771. The proposed 22 VAC 40-771-50 addresses standards exclusive to adoptive providers.

Substantive changes in the proposed regulation for adoptive providers are as follows:

B.2: Revises the section on criminal record background checks to comply with state and federal law. The 1997 Adoption and Safe Families Act and §63.2-1719 of the *Code of Virginia* identify specific criminal offenses which are barriers to becoming adoptive parents. This section of the regulation has been revised to comply with these laws. The current regulation requires a criminal background check, so this is not a new requirement.

B.3: Deletes reference to a finding of “reason-to-suspect” relative to a child protective services record check because it is obsolete.

B.4.b: Clarifies that the local department may request more than two references to ensure the safety and well-being of the child.

B.4.e: Adds requirement for the local department to conduct a home study in a format prescribed by the Department. Local departments already conduct adoptive homes studies and this requirement is based on current best practice.

B.4.f: Adds specific sources of financial information for the adoptive parent to the current provision to ensure that adoptive parents can financially support an adopted child.

B.4.g: Adds a provision that at least one interview must occur in the adoptive home and must include all adult household members. This is an added measure to ensure the adopted child's safety and well-being.

B.6.a: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read "is believed to be free of tuberculosis" rather than "is free of tuberculosis).

C.4.c: Modifies provision by requiring providers to use child restraint devices in accordance with Virginia law. The current regulation limits the provision to weight and age requirements of Virginia law.

C.7: Adds reference to the 24-hour toll free hotline and the telephone number for reporting suspected child abuse and neglect.

D.2.b: Modifies provision to require that the home and grounds be free of safety hazards and allows the local department to require a fire inspection if needed to ensure the overall safety of children in care. The current regulation provides only that the home be free of fire hazards.

D.2.e: Expands the provision for possessing and storing firearms in the home, to better protect the safety of the child in care.

D.2.h: Expands the provision for battery-operated smoke detectors to include additional floors in the home. This replaces the current regulation's more general smoke detector provision in B, 4.

G: The proposed regulation, like the current regulation, continues to allow for an allowable variance if the variance does not jeopardize the safety and care of the child, or violate federal, state or local law. The proposed regulation adds that a variance will not be granted if the provider has been convicted of a crime pursuant to §63.2-1719 of the *Code of Virginia*. The 1997 Adoption and Safe Families and *Code of Virginia* do not allow for variances relative to barrier crimes.

K: The proposed regulation, like the current regulation, continues to provide for provider grievances of agency actions. The proposed regulation clarifies that the grievance would be to the local board, and that if the provider is not satisfied, the provider may appeal to the Commissioner or his designee. Further, the proposed regulation clarifies that decisions on the placement of a specific child are not subject to appeal to the Commissioner, pursuant to §16.1-278.2 and Title 63.2, Chapter 12 of the *Code of Virginia*. Proposed language clarifies that the

grievance procedure applies to applicants as well as providers, which has been presumed in practice.

### **22 VAC 40-771-60, Permanency Providers: Foster Care.**

In the current regulation, 22 VAC 40-770-60 is entitled “Client record requirements for the out-of-home provider.” It provides standards for maintaining documentation pertaining to clients for all provider types. This section of the regulation has been deleted, and the provisions were incorporated into the appropriate provider-specific sections of the proposed regulation. The proposed new section, 22 VAC 40-771-60, addresses all applicable standards exclusive to foster care providers.

Substantive changes in the proposed regulation for foster care providers are s follows:

A.2: Revises the section on criminal record background checks to comply with state and federal law. The 1997 Adoption and Safe Families Act and §63.2-1719 of the *Code of Virginia* identify specific criminal offenses which are barriers to becoming foster parents. This section of the regulation has been revised to comply with these laws. The current regulation requires a criminal background check, so this is not a new requirement.

A.3: Deletes reference to a finding of “reason-to-suspect” relative to a child protective services record check because it is obsolete.

A.4.b: Clarifies that the local department may request more than two references to ensure the safety and well-being of the child.

A.4.e: Adds a requirement for the local department to conduct a home study in a format prescribed by the Department. Local departments already conduct home studies, and this requirement is based on current best practice.

A.4.f: Adds a provision that at least one interview must occur in the foster home and must include all adult household members. This is an added measure to ensure the child’s safety and well-being.

B.4.c: Modifies provision by requiring providers to use child restraint devices in accordance with Virginia law. The current regulation limits the provision to weight and age requirements of Virginia law.

A.6.a: Modifies provision for tuberculosis screening requirements to conform to policy changes made by the Department of Health (i.e., the statement must read “is believed to be free of tuberculosis” rather than “is free of tuberculosis).

B.7: Adds reference to the 24-hour toll free hotline and the telephone number for reporting suspected child abuse and neglect.

C.1.i: Modifies provision to provide that a child of the opposite sex shall not share a bed or bedroom. The current regulation provides that a child of the opposite sex shall not share a double bed. The proposed change is in keeping with best practice and concern for the child's well being.

C.1.j: Clarifies that a child over age five shall not share a bedroom with an adult. This is a new provision, and consistent with concern for the child's safety and well-being.

C.2.b: Modifies provision to require that the home and grounds be free of safety hazards and allows the local department to require a fire inspection if needed to ensure the overall safety of children in care. The current regulation provides only that the home be free of fire hazards.

C.2.e: Expands the provision for possessing and storing firearms in the home, to better protect the safety of the child in care.

C.2.h: Expands the provision for battery-operated smoke detectors to include additional floors in the home. This replaces the current regulation's more general smoke detector provision in B, 4.

F: The proposed regulation, like the current regulation, continues to allow for an allowable variance if the variance does not jeopardize the safety and care of the child, or violate federal, state or local law. The proposed regulation adds that a variance will not be granted if the provider has been convicted of a crime pursuant to §63.2-1719 of the *Code of Virginia*. The 1997 Adoption and Safe Families Act and *Code of Virginia* do not allow for variables relative to barrier crimes.

L: The proposed regulation continues to provide for foster care provider grievances and appeals of agency actions. The proposed regulation clarifies that the grievance would be to the local board, and that if the provider is not satisfied, the provider may appeal to the Commissioner or his designee. Further, the proposed regulation clarifies that decisions on the placement of a specific child are not subject to appeal to the Commissioner, pursuant to §16.1-278.2 and Title 63.2, Chapter 12 of the *Code of Virginia*. Proposed language clarifies that the grievance procedure applies to applicants as well as providers, which has been presumed in practice.

The remainder of the current regulation includes separate sections generic to all provider types regarding: approval period (70), allowable variance (80), emergency approval (90), provider monitoring (100), renewal process (110), inability to continue to meet standards (120), relocation of out-of-home provider (130), right to grieve (140), foster parent right to appeal (150), and medical requirements for clients (160). These sections have been deleted in the proposed regulation because the items are addressed (as applicable) in the new provider-specific sections of 22 VAC 40-771, as detailed above.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

An alternative would be to allow each local department of social services to develop its own provider standards. This alternative is rejected, however, because providing a set of provider standards for all local departments of social services to use reduces the risk of harm to children and adults, offers families assurances that providers and their homes meet qualifications, and is less confusing and easily understood by the entities affected.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comment was received during the NOIRA comment period.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The regulation is clearly written, with commonly used words and phrases, and easily understandable by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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This regulation will be reviewed as needed, and no later than four years after the effective date. At that time, the Department of Social Services will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended or repealed and to ensure that the regulation addresses the specific and measurable goals of assuring that the care purchased or arranged by local departments of social services meets health and safety standards, supports care that is conducive to the health, safety and well-being of children and adults, and complies with all applicable federal and state laws and regulations.